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AMERICAN ARBITRATION ASSOCIATION

JAMES W. BRANNAN, as Personal)	
Representative of the Estate of Robert)	
Indiana,)	
)	
Claimant/Counterclaim Respondent,)	
)	
v.)	AAA Case No. 01-19-0001-9789
)	
MICHAEL MCKENZIE and)	
AMERICAN IMAGE ART,)	
)	
)	
Respondents/Counterclaimants.)	

DECLARATION OF THOMAS J. MCCARTY

I, Thomas J. McCarty, declare under penalties of perjury as follows:

1. The facts stated herein are based upon my own personal knowledge and observations and if called upon to do so I could and would testify to the statements set forth below.

2. As an associate of Markham Read Zerner LLC, I was assigned to travel from our Boston, Massachusetts office to the residence of Michael McKenzie in Katonah, New York for the purpose of observing a team of the Morgan Art Foundation who were going to inspect Robert Indiana artwork possessed by McKenzie. McKenzie's residence was several acres and had a large art studio and other dwellings.

3. The Morgan group came to the residence, as did I, on May 25, 2021.

4. The inspection group of Morgan included two lawyers, Donn Zaretsky and Luke Nikas, three members of the Salama-Caro family, along with a team of three art

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handlers which was explained to me by the Morgan group to have been hired for the explicit purpose of inspecting and doing an inventory of the Indiana artwork possessed by Michael McKenzie on his residence. In total, the group conducting the inspection on behalf of Morgan included approximately eight (8) people.

5. I arrived at the McKenzie residence on the May 25 inspection date at approximately 10:00 A.M. The inspection commenced at approximately 10:30 A.M. and I observed the inspection from when it started until I left at approximately 5 P.M. The inspection was continuous during that time apart from a brief break for lunch. When I left the property, the art handlers of the Morgan inspection group were to continue with the art inspection and I do not know exactly when they finished but they were still working when I left at 5 P.M.

6. During the inspection artwork was the focus as I observed it. I observed the inspection team looking through McKenzie's artwork examining each stack or container of artwork. I observed a detailed inventory of the artwork where one of the inspection team would count up a group of canvas or silkscreens or other artwork, call out the identity of that artwork and state the number of each type of artwork. As they one team member did so, I observed another of the team with a laptop computer record in an excel spreadsheet the type and number in a detailed manner. For many of the artworks I also observed team members taking photographs with cell phones. While the three art handlers conducted this activity, the three members of the Salama-Caro family would either supervise the handlers or would themselves be opening boxes, uncovering various sculptures and artworks and occasionally taking photographs.

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7. Mr. McKenzie was not observed by me as being present at this inspection at any time. Instead, Ozvaldo Gonzalez represented Mr. McKenzie during this Morgan inspection. I observed Mr. Gonzalez showing the Morgan inspection team where the art was, including giving the inspection team a tour of the studio in which the artwork was stored. I did not observe Mr. Gonzalez or anyone else restrict the Morgan inspection team from any access.

8. The studio involved two floors. The upper floor was almost exclusively a storage area where numerous boxes of various sizes contained different types of artwork, sculptures, and books. The second floor is where the art handlers were conducting their inspection and inventory procedure. I observed the team inspecting all varieties of boxes, sculptures and books, including looking under coverings, such as tarps and the like to inspect any artwork underneath those coverings. I did not observe Mr. Gonzalez or anyone else restricting the areas in which the team could go to do inspections.

9. The lower floor of the studio was an active studio with silk screening equipment and supplies. The lower floor also contained boxes, a number of cabinets and filing cabinets with drawers. I observed Mr. Gonzalez showing members of the Morgan inspection team where the Indiana art was stored, including giving members of the inspection team a tour of the lower floor and opening drawers and cabinets to show them where specific types of artwork were stored so the team could access and inspect them. I did not observe Mr. Gonzalez restricting the areas in which the team could go to do inspections.

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I declare under penalties of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 13th day of September, 2021, in Boston, Massachusetts.

/s/ Thomas J. McCarty
Thomas J. McCarty